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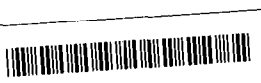
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bliss World LLC,	:	
	:	
Opposer,	:	
	:	Opposition No. 91/151,554
v.	:	
	:	
Matt Williams,	:	
	:	
Applicant.	:	



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OPPOSER'S MOTION TO SUSPEND PROCEEDINGS AND (1) FOR JUDGMENT, OR (2) TO RESCHEDULE A FULL TESTIMONY PERIOD OR (3) TO EXTEND CLOSE OF TESTIMONY PERIOD FOR OPPOSER AND ALL OTHER DATES REMAINING IN SCHEDULING ORDER

INTRODUCTION

On April 29, 2002 Opposer filed a Notice of Opposition against Application Ser. No. 76/223,268. On May 9, 2002 the Board mailed a Scheduling Order setting June 18, 2002 as the deadline for Applicant to Answer. To this date, Opposer has *never* received a copy of the Answer, though counsel for Opposer has made repeated attempts (as explained below) to learn from the Board when a Notice of Default Judgement would issue. Today however, counsel for Opposer learned from a Board representative that, in fact, an Answer had been timely filed with proof of service, despite the fact that counsel for Opposer never received a copy of such Answer. Now, through no neglect of its own, Opposer has filed no testimony and is facing the close of its testimony period on February 23, 2003. Accordingly, pursuant to Rule 2.117(c) and Rule 2.127(a) of the Trademark Rules of Practice, Applicant hereby moves that the Board suspend the

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proceedings until it decides this motion and then reset Opposer's testimony period to begin thirty days following the date of the Board's Order on this Motion. In the alternative, Opposer hereby moves that the Board extend the close of the Opposer's testimony period and extend the remaining dates set by the Board's Scheduling Order.

FACTS

Pursuant to Trademark Rule of Practice 2.116(a) (and FRCP 6(b)), if a party files a motion after the expiration of the time period as originally set, the motion is deemed a motion to reopen and the moving party must show that its failure to act during the time allowed was the result of excusable neglect. Opposer submits that its failure to request the resetting of the deadlines for the beginning of its testimony period was not the result of neglect at all, and in any event, any "neglect" is certainly "excusable." Counsel for Opposer simply never received a copy of the Answer filed in this case. In diligently monitoring the file and recognizing that it had not received such, counsel for Applicant made repeated attempts to learn of the status of the matter and when it might expect to receive a copy of a Notice of Default. For example, on November 19, 2002, counsel for Opposer placed a call to Millicent Canady, the legal assistant in charge of this proceeding, and left a message at 2:30 p.m. stating that it had never received a copy of an Answer and accordingly wanted to find out when a Notice of Default would be entered. Counsel for Opposer never received a return call from Ms. Canady.

On December 26, 2002, counsel for Opposer checked the TARR official website to learn when the Default Judgement had been issued, but the status of the proceedings indicated that no such judgement had yet been entered. Following this, counsel for Opposer contacted Brendan McCauley, the attorney listed in charge of Applicant's application, to learn whether he might have any information as to the status of the proceeding, since no word had been received from

Ms. Canady. At 5:05 p.m., on December 26, 2002, counsel for Opposer left Mr. McCauley a voicemail message asking if he knew the status of the proceeding. On December 27, 2002 counsel for Opposer received a voicemail from Mr. McCauley stating that he did not have any further information and that the Board could only provide such requested information.

In light of the upcoming testimonial deadline, counsel for Opposer wanted to be certain that the Notice of Default would be entered shortly and spoke with a representative at the Board today and inquired further about the status of the proceeding. The representative looked up the proceeding and notified counsel for Opposer that indeed an Answer had been filed in the case. Counsel for Opposer then spoke with Ms. Nancy Omelko, and further learned that proof of service was filed with the Answer - - again, despite the fact that to this date, counsel for Opposer has yet to receive a copy of the Answer.

Counsel for Opposer then contacted counsel for Applicant, explained to him the situation and respectfully requested that Applicant consent to an extension of time for the close of Opposer's testimony period and for the remaining dates set forth in the Scheduling Order. Counsel for Applicant said he would try to receive instructions from his client by the end of the day. Because at the close of business today, counsel for Applicant had not yet received word from Applicant as to whether consent could be granted, Opposer's only remaining option is to file the instant motion. Moreover, counsel for Applicant has not yet forwarded a copy of the Answer filed to counsel for Opposer and accordingly, Opposer is not able to put in relevant or responsive testimony since as of the close of business today it does not know what Applicant has alleged in its Answer.

As the Board can see, counsel for Opposer was diligent in trying to determine why it had not received a Notice of Default, since in all its prior experience, when an Answer is not received

by Opposer, a Notice of Default generally follows within several months after the deadline to Answer has passed. Unfortunately, despite its repeated attempts, counsel for Opposer was unable to receive any substantive information on the proceedings until today, and accordingly makes this motion with good cause.

Throughout its repeated attempts to learn information as to the status of the proceeding, Opposer was always under the impression that the opposition would be disposed of by a default judgement. Accordingly, Opposer never entertained the possibility of extending the dates in the original scheduling order or filing a summary judgement motion or trial testimony. Opposer understands that standard practice in oppositions -- which Opposer followed -- is for an Opposer to defer all action to prosecute the opposition until after the applicant files an Answer and the Opposer knows then that the opposition will not be sustained by default. Because now Opposer has learned that a default judgement is not a possibility, it requests that it have the opportunity to resolve this proceeding in the most efficient matter both for the parties and for the Board.

I. MOTION FOR JUDGMENT

A motion to resolve a case which has been effectively abandoned by a party is within the Board's inherent power to control its proceedings. Although Applicant instructed its attorney to file an Answer in this Opposition, it has conducted absolutely no discovery. This, coupled with the fact that Applicant is an individual and the application is based on an intent to use, gives reason for Opposer to respectfully move that judgement for Opposer be granted as if Applicant had defaulted. If Applicant remains interested in defending the opposition, it can oppose the motion. At the very least, Applicant should indicate to the Board that it still has an interest in defending this opposition before the Board further rules on this motion. If not, a default judgment will resolve the matter in the most efficient way.

II. MOTION TO RESET TESTIMONY PERIOD

If a motion for judgment cannot be granted now, Opposer requests the opportunity to file a Motion for Summary Judgement. Opposer can only do such if the start of its testimony period is reset. Trademark Rule 2.127 (e)(1); TBMP 528.02. Opposer does not need discovery and does not wish the discovery period to be reset. Opposer has demonstrated that its failure to request the resetting of such dates was the result of excusable neglect. Also, the request will not prejudice Applicant and will enable the matter to be resolved efficiently for the Board and the parties. Therefore, Opposer respectfully requests that the Board reset the period for start of Opposer's testimony period to a date thirty days from the issuance of the Board decision on this motion.

III. MOTION TO EXTEND

In the alternative, Opposer notes that it is filing this motion prior to the February 23, 2003 close of its testimony period in the instant proceeding. Pursuant to Trademark Rule of Practice 2.116(a) (and FRCP 6(b)), if a motion is filed prior to the expiration of the period originally set, the motion is deemed a motion to extend and the moving party need only show good cause for the requested extension. As detailed above, Opposer has certainly shown good cause in that it diligently kept abreast of the proceedings to learn when the Notice of Default was to issue. Again, it was only today that it discovered that indeed the proceeding would not disposed of by such a judgement and that instead it would need to further litigate the proceeding. Accordingly, if the Board denies Opposer's request to reset the start of the testimony period of Opposer, it asks in the alternative that the Board at least extend the close of Opposer's testimony period by a reasonable time and reset the remaining dates set in the Scheduling Order.

Finally, the Board has the power to suspend the proceedings when the movant is able to demonstrate good cause. Opposer therefore further requests that the instant proceeding be

suspended while the Board renders its decision on Applicant's Motion to Reset the Testimony Period or in the Alternative to Extend the Close of Opposer's Testimony Period and the Remaining Dates, since -- quite obviously -- by the time the Board decides the motion, the close of Opposer's testimony period will have passed and Opposer will be unduly prejudiced. Opposer respectfully submits that good cause has been demonstrated and that the Board grants its Motion in its entirety.

Respectfully submitted

Dated: New York, New York
February 21, 2003

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: _____
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"Express Mail" mailing label No. EV082862999US
Date of Deposit: February 21, 2003
hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Christina Williams
(Print name of person mailing paper or fee)

_____
(Signature)

February 21, 2003
(Date of Signature)

CERTIFICATE OF SERVICE

I hereby certify that a copy of Opposer's Motion to Suspend Proceedings and (1) for Judgment, or (2) to Reschedule a Full Testimony, or (3) to Extend Close of Testimony for Opposer and All Other Dates Remaining in Scheduling Order has been served by first class mail, postage prepaid, this 21st day of February, 2003 on the following:

J.P. Lunn, Esq.
David Goodman & Madole P.C.
2 Lincoln Centre 5420 LBJ Ste. 1200
Dallas TX 75240-6215

Kim Justice

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